

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the Family  
Child Care License of Cheryl Fischer

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION**

This matter came on for an evidentiary hearing before Administrative Law Judge Eric L. Lipman on February 5, 2014. The hearing record closed on that day following the adjournment of the evidentiary hearing.

Grace C. Song, Assistant County Attorney, appeared on behalf of the Hennepin County Community Human Services and Public Health Department and the Minnesota Department of Human Services (Department). Cheryl L. Fischer, the Licensee, appeared on her own behalf and without counsel.

**STATEMENT OF THE ISSUE**

1. Is there reasonable cause to believe that Ms. Fischer violated either a statute or a rule that is applicable to her family child care license?
2. Did Ms. Fischer establish that she was in full compliance with the statutes and rules that are applicable to her family child care license?
3. Should Ms. Fischer's family child care license be revoked?

**SUMMARY OF CONCLUSION**

The Administrative Law Judge concludes that: (1) there was reasonable cause for the Department to believe that Ms. Fischer violated applicable training, capacity and record-keeping regulations; (2) Ms. Fischer did not establish that she is in full compliance with the requirements of her family child care license; and (3) revocation of Ms. Fischer's license is the most appropriate regulatory response in this case.

Based upon the hearing record, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. Ms. Fischer operates a family child care out of her home in Minneapolis, Minnesota.<sup>1</sup>

2. Ms. Fischer holds DHS License Number 110997-R02. She has provided licensed family child care services since November 27, 1978.<sup>2</sup>

3. Under the terms of her “C-2 license,” Ms. Fischer is permitted to care for a total of 12 children. Further, her license limits the provision of care to a maximum of 10 pre-school children and “no more than 2 shall be infants and toddlers” at any one time. Lastly, of the number of infants and toddlers that may be cared for at any one time, Ms. Fischer was permitted to care for a single infant.<sup>3</sup>

4. Ms. Fischer’s child care license was scheduled to expire on July 1, 2013. Before the expiration of the license, and while the re-licensing process was underway, the Department of Human Services issued an Order of Temporary Immediate Suspension. The Order suspending daycare operations at Ms. Fischer’s home was issued on May 16, 2013.<sup>4</sup>

5. As detailed in the Administrative Law Judge’s report *In the Matter of the Temporary Immediate Suspension of the Family Child Care License of Cheryl Fischer*, licensing officials noted a number of serious violations during scheduled and unscheduled visits to the daycare home in May of 2013. Among the violations that were established during appeal proceedings on the suspension order, and as to which there is no genuine dispute today, are that:

(a) Ms. Fischer furnished a set of altered certificates in support of her claim that she had completed the required hours of annual training.<sup>5</sup>

(b) The Sudden Infant Death Syndrome (SIDS) training certificate for Ms. Fischer’s substitute caregiver, LaVonne Ribbe, lapsed in May of 2012. Between May of 2012 and February 2013, Ms. Ribbe provided services to children under care before renewing this training.<sup>6</sup>

---

<sup>1</sup> Exhibits 1 - 5; Testimony of Cheryl Fischer.

<sup>2</sup> Test. of C. Fischer.

<sup>3</sup> See, Minn. R. 9502.0367 (C)(2).

<sup>4</sup> Ex. 5.

<sup>5</sup> Ex. 7 at 3 - 4.

<sup>6</sup> *Id.* at 4 – 5; Minn. Stat. § 245A.50, subd. 5(b) (“Sudden unexpected infant death reduction training required under this subdivision must be at least one-half hour in length and must be completed in person at least once every two years”).

(c) In May of 2013, Ms. Fischer exceeded the capacity of her daycare license because she was caring for two infants, two toddlers and three pre-school children at the same time.<sup>7</sup>

(d) Ms. Fischer told licensing officials that she was seeking medical treatment on May 14 and that this treatment would be followed by two weeks of convalescence, during which her daycare would be closed. This was not true. Ms. Fischer misled licensing officials in an effort to exceed the capacity limits of her license for a ten-day period in May and to avoid detection for this violation.<sup>8</sup>

(e) On May 16, 2013, the Correction Order that had been issued to Ms. Fischer six days earlier, was not posted “in a place that is conspicuous to the people receiving services and all visitors to [her] facility.”<sup>9</sup>

(f) During a May 16, 2013 inspection visit, Ms. Fischer provided inaccurate information as to the age of a boy under care. Ms. Fischer did not accurately report the boy’s age in an effort to frustrate licensing officials from discovering a capacity violation.<sup>10</sup>

6. On July 23, 2013, the Commissioner of Human Services affirmed the Order of Temporary Immediate Suspension.<sup>11</sup>

7. On October 21, 2013, the Commissioner of Human Services issued an Order revoking Ms. Fischer’s family child care license. As the Commissioner reasoned:

[B]ecause you failed to provide a safe sleep space for an infant in accordance with SUID reduction protocol; because you provided false and misleading information to Hennepin County when you falsified training records [and false information] regarding the age of a child in case; because you failed to provide supervision to children in care; because you failed to provide current documentation of training records for you and a caregiver; and in order to protect the health, safety and rights of children

---

<sup>7</sup> Compare, Ex. 7 at 5 with Minn. R. 9502.0367 (C)(2).

<sup>8</sup> Ex. 7 at 6 (“At the evidentiary hearing, Ms. Fischer acknowledged that she knew that she was over the capacity limitations of her license on May 16; that she knowingly exceeded the limits of her license so as to provide care for a family that needed these services; and that she had planned to exceed these same limits for another nine days after May 16, when her misconduct was discovered by County licensing officials”).

<sup>9</sup> Ex. 9, Attachment I; Test. of B. Clifton; Minn. R. 9502.0367 (C)(2).

<sup>10</sup> Ex. 7 at 5-6.

<sup>11</sup> Ex. 8 and Ex. 10 at 2.

receiving services in DHS licensed program, your license to provide family child care is revoked.<sup>12</sup>

8. Ms. Fischer filed a timely appeal of the Order of Revocation.<sup>13</sup>

Based upon the Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 245A.07.

2. The County and the Department have complied with all of the substantive and procedural requirements of law and rule.

3. In this proceeding, the Department has the burden to demonstrate that reasonable cause existed for the revocation of the Licensee's family child care license, as provided in Minn. Stat. § 245A.08, subd. 3. If the Department makes that showing, the burden of proof shifts to the Licensee to demonstrate by a preponderance of the evidence that she was in full compliance with the laws and rules that the Commissioner alleges were violated.

4. At a hearing on a licensing sanction, the Department, or its designee, may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule.<sup>14</sup>

5. The purpose of family child care licensure statutes and rules is to protect the care, health and safety of children served by licensed programs.<sup>15</sup>

6. Minn. Stat. § 245A.07, subd. 1, provides that "[w]hen applying sanctions authorized under this section, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program."

7. The Department demonstrated that the Licensee failed to implement the SUID reduction protocol, provide accurate and complete information regarding her daycare to county licensing officials and faithfully observe the capacity limitations of her daycare license. The Department demonstrated reasonable cause to believe that violations of the family child care licensing laws and rules occurred.

---

<sup>12</sup> Ex. 10 at 5.

<sup>13</sup> Ex. 12.

<sup>14</sup> See, Minn. Stat. § 245A.08 (3).

<sup>15</sup> Minn. R. 9502.0325, subp. 1.

8. Ms. Fischer did not show that she was in full compliance with the requirements of Minn. Stat. ch. 245A and Minn. R. ch. 9502.

9. Ms. Fischer did not establish that revocation of her license is a disproportionate response to her misconduct.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

The Administrative Law Judge recommends that the Order revoking Cheryl L. Fischer's family child care license be **AFFIRMED**.

Dated: March 7, 2014

s/Eric L. Lipman  
ERIC L. LIPMAN  
Administrative Law Judge

Reported: Digital Recording

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Debra Schumacher, Administrative Law Attorney, P.O. Box 64998, St. Paul MN 55164, (651) 431-4319 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62 (1), the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

At the evidentiary hearing, Ms. Fischer argued that revocation of her daycare license is a disproportionate response to her licensing violations. She maintains that the regulatory standards of Chapter 9502 should be administered with an eye toward the needs of those families seeking daycare. If the licensing regulations were implemented in this way, Ms. Fischer continues, not only would licensing officials be more supportive of the local daycare providers but those providers would remain in service. Ms. Fischer asserts that reducing the capacity limits of her license, and not revocation of that license, is the appropriate result in this case.<sup>16</sup>

Ms. Fischer does have a point: Revocation of a family child care license is a very potent sanction. This is particularly true when, as here, the licensee has provided daycare services to children for three decades. The state appellate courts have held that licensees have a protected property interest in pursuing (and maintaining) employment in regulated occupations.<sup>17</sup> Thus, any licensing sanction that restricts an individual's right to maintain this employment must have a "substantial relationship to public health, safety, morals, or general welfare."<sup>18</sup>

There is such a substantial relationship in this case.

In the view of the Administrative Law Judge, there is real doubt that Ms. Fischer would faithfully follow the limits of a more-restrictive license, if, in the future, her business interests, the needs of a parent, or her reputation obliged a choice between the two. For example, when, in the spring of 2013, Ms. Fischer was presented with a choice between placing additional children under care and the capacity limitations of her license; she broke the rule. Moreover, Ms. Fischer confected an elaborate set of tales and forged documents in order to hide the shortcomings of her daycare. A little later still, she took down posted correction orders that pointed out some of these shortcomings because a family member was visiting her home from out of town.<sup>19</sup>

It is undeniable that the parents who were Ms. Fischer's clients are eager to have nearby care for their children. Yet, this is not the only thing they need. They also need the firm assurance that important health and safety rules will be followed – even when no one is looking. Because the hearing record does not point to good prospects for compliance with the licensing standards in the future, revocation of Ms. Fischer's family child care license is the most appropriate result.

**E. L. L.**

---

<sup>16</sup> See, Ex. 9 at 5; Test. of C. Fischer.

<sup>17</sup> See, *Obara v. Minnesota Dep't of Health*, 758 N.W.2d 873, 878 (Minn. Ct. App. 2008) (citing *Sweet v. Comm'r of Human Servs.*, 702 N.W.2d 314, 320 (Minn. Ct. App.), *review denied* (Minn. 2005)).

<sup>18</sup> See, *Pomrenke v. Comm'r of Commerce*, 677 N.W.2d 85, 92 (Minn. Ct. App. 2004); *Humenansky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 566 (Minn. Ct. App. 1994).

<sup>19</sup> Test. of C. Fischer.